

§ 3401.103

divested within 90 days from the date divestiture is ordered by the DAEO unless the employee obtains a written waiver from the DAEO in accordance with this section.

(3) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, an employee must disqualify himself or herself, in accordance with 5 CFR 2635.402 and 3401.103, from participating in particular matters which, as a result of continued ownership of prohibited securities, could affect the financial interests of the employee or those of the spouse or minor child of the employee. Disqualification is not required where a waiver described in § 2635.402(d) applies.

(4) *Tax treatment of gain on divested securities.* Where divestiture is required by this section, the employee or the spouse or minor child of an employee may be eligible to defer the tax consequences of divestiture by obtaining a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the securities in accordance with subpart J of 5 CFR part 2634.

(e) *Waiver.* The DAEO may grant a written waiver from this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of an employee's misuse of position or loss of impartiality, or to otherwise ensure confidence in the impartiality and objectivity with which the Commission's programs are administered, or in the case of a special Government employee, divestiture would result in substantial financial hardship. A waiver under this paragraph must be in writing and may impose appropriate conditions, such as requiring execution of a written disqualification.

(f) *Definitions.* For the purposes of this section:

(1) The term *securities* includes an interest in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets, and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and

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contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(2) The term *parent* means a company that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity identified in paragraphs (a)(1) through (a)(6) of this section.

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§ 3401.103 Procedures for accomplishing disqualification.

(a) An employee, other than a member of the Commission, who is required, in accordance with 5 CFR 2635.402(c), 2635.502(e), or 2635.604(a), to disqualify himself from participation in a particular matter before the Commission shall provide written notice of disqualification to his supervisor and to the DAEO when he becomes aware of the need to disqualify himself from participation in the matter. This procedure is required notwithstanding the guidance in 5 CFR 2635.402(c)(2), 2635.502(e)(2), and 2635.604(c).

(b) An employee may withdraw written notice under paragraph (a) of this section upon determining that disqualification from participation in the matter is no longer required. A withdrawal of disqualification shall be in writing and shall be provided to the employee's supervisor and to the DAEO.

§ 3401.104 Prior approval for outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, must obtain written approval from the DAEO through normal supervisory channels before engaging in outside employment with any person who is a "prohibited source" as that term is defined at 5 CFR 2635.203(d).

(b) *Approval of requests.* Approval under this section shall be denied only upon a determination by the DAEO that the outside activity is expected to involve conduct prohibited by statute